



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,030	10/12/2004	Shinji Seto	Swan Case 803	8690
23474	7590	05/19/2005	EXAMINER	
FLYNN THIEL BOUTELL & TANIS, P.C. 2026 RAMBLING ROAD KALAMAZOO, MI 49008-1699			LE, HUYEN D	
			ART UNIT	PAPER NUMBER
			2643	

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/511,030	SETO, SHINJI
	<b>Examiner</b>	<b>Art Unit</b>
	HUYEN D. LE	2643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 October 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 3-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 3-9 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Regarding claim 1, line 5, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Also in the same line 5, "like" renders the claim indefinite.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 3-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iseberg et al. (U.S. patent 5,887,070).

Regarding claims 1 and 9, Iseberg teaches an earpad (the eartip 38) that is adapted to be inserted and detachably set in an auditory meatus. The earpad has a hollow and cylindrical basic body (44) and a number of gathered sound insulating walls (39, 40, 41) of the same material as the basic body as claimed (figures 1 and 2).

Iseberg does not specifically teach the hollow cylindrical basic body (44) and the insulating walls (39, 40, 41) of the earpad (38) that are made of an elastic material. However, it is known in the art to provide the earpad or eartip that is made of elastic material.

Since Iseberg does teach the earpad (38) to be made of soft compliant material; it therefore would have been obvious to one skilled in the art to provide the earpad (38) of Iseberg to be made of any soft compliant material such as an elastic material for better sealing and providing a comfort to the wearer.

Regarding claim 3, Iseberg shows the sound insulating wall as claimed (figure 2).

Regarding claim 4, Iseberg show the sound insulating wall that is provided in the direction crossing at right angles the center line of the basis body (figure 1), and the wall thickness of the sound insulating wall (41) becomes smaller toward the outer periphery thereof (figure 2).

Regarding claim 5, Iseberg show the sound insulating wall that has the same thickness of its entire portion and is slightly slanted backward to the rear edge side, and further the wall thickness of the sound insulating wall (41) becomes smaller toward the outer periphery thereof (figure 2).

Regarding claim 6, Iseberg teaches the sound insulating wall that includes air bubbles having the sound absorbing capability as claimed (col. 3, lines 39-45).

Regarding claim 7, as shown in figure 2, the sound insulating wall (39) has the diameter as claimed.

Regarding claim 8, Iseberg does not specifically show a number of sound insulating walls as claimed. However, Iseberg does estimate a plurality of sound insulating walls for the earpad or eartip (38).

Art Unit: 2643

Therefore, it would have been obvious to one skilled in the art to provide any number of sound-insulating walls for the Iseberg eartip (38) such as five to ten sound insulting walls to provide a better sealing to the ear canal.

***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Schier (U.S. patent 2,521,414) teaches a rubber cone that has a plurality of soft rubber discs (31) for the ear tip.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CURTIS KUNTZ can be reached on (571) 272-7499. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



HL  
May 13, 2005



HUYEN LE  
PRIMARY EXAMINER